ADT, LLC d/b/a ADT Security Services *and* International Brotherhood of Electrical Workers, Local Union 43. Cases 03–CA–184936 and 03–CA–192545

June 22, 2022

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS KAPLAN, RING, AND PROUTY

This case is on remand from the United States Court of Appeals for the Second Circuit. On February 27, 2020, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding.[1] The Board found that the Respondent violated Section 8(a)(5) and (1) by bypassing the Charging Party and dealing directly with its employees. In addition, applying the contract coverage standard announced in *MV Transportation, Inc.*, 368 NLRB No. 66 (2019), the Board reversed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) by unilaterally implementing mandatory 6-day workweeks for service and installation technicians at the Respondent's Albany and Syracuse facilities.

Subsequently, the Charging Party petitioned the Second Circuit for review of the Board's finding that the Respondent's unilateral implementation of 6-day workweeks did not violate the Act. On August 12, 2021, the court issued its decision and vacated the Board's order. The court held that the contract coverage standard is rational and consistent with the Act. *IBEW Local 43 v. NLRB*, 9 F.4th 63, 73 (2d Cir. 2021). However, the court found that the Board's application of the standard had been erroneous and that the plain language of the parties' collective-bargaining agreements did not permit the Respondent to unilaterally impose the 6-day workweeks. Id. Accordingly, the court concluded that the Respondent had violated Section 8(a)(5) and (1) of the Act by failing to bargain with the Charging Party before implementing the change, vacated the Board's order, and remanded the case for further consideration consistent with its opinion.

On January 4, 2022, the Board advised the parties that it had accepted the court's remand and invited the parties to file statements of position. The Respondent, Charging Party, and General Counsel filed statements.

The Board has reviewed the entire record, including the parties' statements of position, in light of the court's decision, which we accept as the law of the case.[2] The Board has delegated its authority in this proceeding to a three-member panel.

Having accepted, as the law of the case, the court's conclusion that the Respondent violated the Act by implementing the 6-day workweeks unilaterally, the appropriate remedy is the only issue remaining. The Respondent contends that the Board should deem the violations moot because the contract language that gave rise to the controversy has been removed from successor collective-bargaining agreements, the successor agreements have been in effect without incident for 2 years, and all due overtime has been paid. We do not find that these circumstances render the Respondent's violations moot. See *Bellkey Maintenance Co.*, 270 NLRB 1049, 1056 (1984) (holding that cessation of violative actions does not make a case moot).

We agree, however, with the General Counsel's assertion that some provisions of the administrative law judge's recommended order are no longer necessary here. Specifically, because the 6-day workweeks have not been in effect since 2016, and the successor agreements contain language to clarify scheduling provisions and delineate when the Respondent may change employee schedules, we find it unnecessary to order the Respondent to cease and desist from unilaterally imposing 6-day workweeks on unit employees and from refusing to bargain over the 6-day workweeks. We also find it unnecessary to order the Respondent to rescind the 6-day workweeks. Instead, we shall order the Respondent to cease and desist from making unilateral changes to unit employees' schedules unless authorized to do so under the relevant collective-bargaining agreement and to bargain before implementing any changes in wages, hours, or other terms and conditions of employment. Consistent with the non-appealed portions of the Board's original order, we shall also order the Respondent to cease and desist from dealing directly with its employees.

ORDER

The Respondent, ADT, LLC d/b/a ADT Security Services, Albany and Syracuse, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing the hours and schedules of its unit employees unless authorized to do so under the relevant collective-bargaining agreement.

(b) Bypassing the Union and dealing directly with unit employees regarding their terms and conditions of employment.

[1] 369 NLRB No. 31 (2020).

[2] Member Prouty was not a member of the Board when *MV Transportation* was issued, and he takes no position on whether that case was correctly decided. He accepts *MV Transportation* as the law of this case.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining units:

> All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Respondent at its facility in Albany, NY; but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined in the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at its Albany, NY facility.
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> All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business technicians, employed by the Respondent at its facility in Syracuse, NY, but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined by the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at, its Syracuse, NY facility.

(b) Post at its facilities in Albany and Syracuse, New York, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent since September 22, 2016.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. June 22, 2022

Marvin E. Kaplan, Member

John F. Ring, Member

David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT unilaterally change your hours and schedules unless authorized to do so under the relevant collective-bargaining agreement.

WE WILL NOT bypass the Union and deal directly with you regarding your terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining units:

All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Respondent at its facility in Albany, NY; but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined in the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at its Albany, NY facility.

All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business technicians, employed by the Respondent at its facility in Syracuse, NY, but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined by the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at, its Syracuse, NY facility.

ADT, LLC D/B/A ADT SECURITY SERVICES

The Board's decision can be found at www.nlrb.gov/case/03-CA-184936 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.